

## **2017 House Bipartisan Work Group on Unemployment Insurance Fraud Final Report**

### **I. Summary**

The purpose of this report is to summarize the results of extensive discussions carried out by the Unemployment Insurance (UI) Fraud work group convened by State Representative Joseph Graves, Chair, House Oversight Committee. This report includes an overview of the work group, the scope of issues discussed, the conceptual points of agreement achieved by the work group, and proposed language that has been approved by the work group.

### **II. Overview of Work Group**

Between March 6th and April 24th of this year, Representative Graves led a weekly workgroup aimed at exploring and building consensus among UI agency, employer, and claimant advocate representatives on legislative solutions to various flaws in Michigan's UI system. Rep. Kevin Hertel, Minority Vice Chair of the House Oversight Committee, was an active participant. Legislative and policy staff were included to ensure that chamber was informed on the direction and progress of the work group.

Although the group did not adopt a formal 'mission statement,' participants agreed that everyone has a stake in a fair, accurate, and efficient unemployment insurance system; one which is protected against fraud; one with fund balances sufficient to respond to future economic downturns; and one that works for claimants and employers alike.

### **III. Work group Participants**

#### **Leaders, House Oversight Committee:**

- *Rep. Joseph Graves, Chair, House Oversight Committee;*
- *Rep. Kevin Hertel, Minority Vice Chair, House Oversight Committee.*

#### **Representing Claimant Advocates:**

- *Fran Brennan, MI AFL-CIO;*
- *Steve Gray, Clinical Assistant Professor and Director, UM Law School Unemployment Insurance (UI) Clinic, participating as an advisor to the MI Poverty Law Program (MPLP);*
- *Jean Doss, Capitol Services, Inc., Governmental Affairs Consultant to MPLP.*

#### **Representing Employers:**

- *Wendy Block, MI Chamber of Commerce;*
- *Delaney McKinley, MI Manufacturers Association;*
- *Neil MacVicar and Rachelle McKinney, MI Health and Hospital Association.*

#### **Representing the Agency:**

- *Bruce Noll, Acting Deputy Director, Unemployment Insurance Agency (UIA)*
- *Brian DeBano, Deputy Director, Michigan Talent Investment Agency.*

Legislative Staff:

- Aaron Porter, Legislative Director, Rep. Joseph Graves;
- Leah Maher, Legislative Director, Sen. Peter MacGregor;
- Amanda Gill, Legislative Director, Rep. Martin Howrylak, Vice Chair, House Oversight Committee.

Policy Staff:

- Brandon Lanyon, House Republican Policy Office;
- Ryan Hocker, House Democratic Policy Office;
- Andy Buss, Senate Majority Policy Office.

Law Students, UM Law School UI Clinic:

- Lauren Fitzsimons
- Joe Dalia.

**IV. Issues/Section/Description & Conceptual Agreements**

The work group meetings have yielded the following conceptual points of agreement:

Issue & MCL Section	Description/Current Law	Conceptual Agreement
#1. Interest Applied to Overpayments  § 15 & 62	MI charges 1% monthly interest on overpayments.	<b>Agreement:</b> No interest in cases of Agency error, current interest requirement stays for cases of fraud, interest begins accruing on unpaid amounts after 1 year in non-fraud cases Three-tier system: 1. Interest applies immediately if fraud is found 2. No interest if overpayment was due to an agency error (and not fraud) 3. Interest takes effect one year after a final adjudication if there was a non-fraud overpayment not caused by agency error
#2. Access to Advocacy Program for Those Accused of Fraud  § 5a	Current law excludes those accused of fraud from Advocacy Program.	<b>Agreement:</b> Those accused of fraud will have access to the Advocacy Program, so long as doing so will not require an additional appropriation. If a claimant used the Program and is found to have committed fraud following a final adjudication, the Agency will recover payments to the claimant's advocate from the claimant.
#3. a) Allow Reopening of Fraud Cases Beyond One Year;  b) Clarify time limit for re-opening of other cases; § 32a	Currently, the agency can't reopen a case after 1 year even if new information becomes available from claimant or employer.	<b>Agreement:</b> The reopening period will be changed to three years with good cause for fraud cases, but will remain one year with good cause for non-fraud cases.  Additionally, the work group agreed to add language clarifying that § 32(a)'s one year reopening deadline applies to all agency adjudications.

<p>#4. a) Ensure Accused Gets Notice; b) Legally require claimants to maintain current address with agency for one year.</p> <p>§ 32a</p>	<p>Currently, UIA only sends notifications to last known address, which may or may not be the claimants current address.</p>	<p><b>Agreement:</b> Two-part reform: 1. The UIA will send fraud notices to all known addresses (based on addresses on file with UIA, Treasury, and Secretary of State) 2. Good cause to reopen will include incidents where determinations/redeterminations are sent to the wrong address, so long as corroborating evidence can be supplied by the accused.</p>
<p>#5. Employer Non-Compliance Determination Process</p> <p>§ 20a</p>	<p>UIA process for issuing employer determinations under Sec. 20a has been confusing, time consuming and ineffective.</p>	<p><b>Agreement:</b> See proposed language provided by Employers</p>
<p>#6. Support for Employees and Employers in ID Theft Situations</p>	<p>Current law doesn't address how UIA should handle imposter claims resulting from ID theft</p>	<p><b>Agreement:</b> See proposed language provided by Employers</p>
<p>#7. Preventing payment of benefits to ID thieves</p>	<p>In face of proliferation of imposter claims, UIA needs to strengthen ID verification processes</p>	<p><b>Agreement:</b> Mandate that UIA require claimant's applying for benefits online to provide proof of identification (any of the documents used by the federal I-9 form).</p>
<p>#8. Fraud Penalties</p> <p>§ 54(b)</p>	<p>Michigan's current penalty rate for fraud is 200% of the overpayment for benefit payments under \$500, and 400% percent of the overpayment for benefit payments exceeding \$500.</p>	<p><b>Agreement:</b> For fraud other than identity fraud: 1. Penalty will be 100% of overpayment for first instance 2. Penalty will be 150% of overpayment for subsequent instances For identity fraud, the penalty will be equal to 400% of the overpayment.</p>
<p>#9. Claim Settlement Pilot Program</p>	<p>Currently claims are an all or nothing proposition. You are either approved or denied for all weeks you are eligible for. Employers are proposing a process in which parties can "settle" claims for unemployment.</p>	<p><b>Agreement:</b> We should pilot an optional informal settlement process on a time-limited basis with reimbursing employers. Settlements must be approved by an ALJ and claimants are assured representation in the settlement process. Since this is a novel program, the Agency will need to seek feedback from USDOL once proposed language is introduced.</p>

<p>#10. Hardship Waivers</p> <p>§ 62(a)(ii)</p>	<p>Sec. 62 of the Act was amended in 2013 to make restitution waivers mandatory if claimant household income is below federal poverty level. Current statutory language defining financial hardship is vague and the Agency is following procedures put in place before the 2013 amendments.</p>	<p><b>Agreement:</b> Clarify eligibility for hardship waiver and appropriate Agency process for adjudicating applications. Claimants will only be eligible to apply for hardship waiver every 6 months.</p>
<p>#11. Reinstate UI Advisory Committee</p>	<p>MCL 421.3a provides for Employment Security Advisory Council but it was abolished by Executive Order in 1994. Employers and Claimants agree that some of recent problems with Agency practices could have been avoided in the Agency was engaged in meaningful dialogue with interested parties.</p>	<p><b>No legislative action needed at this time</b></p> <p>UIA agrees to formalize Employer Advisory Committee and create Claimant Advisory Committee, groups to meet regularly and occasionally joint meetings will be scheduled. All parties agreed to send Bruce Noll list of individuals to include in groups.</p>

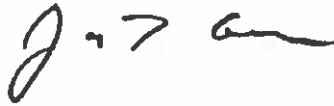
#### V. Proposed Language & Next Steps

In addition to the conceptual agreements outlined above, the parties have agreed on many issues to specific language for statutory amendments. The agreed-upon language is appended to the end of this report. It is the understanding of the work group that this language as constructed serves the interests of all involved parties and that it is in ideal form to be incorporated into forthcoming UI legislation.

It is understood that, without seeing the final language in bill form, no party can give its full support to the policy changes outlined above. However, by signing this document, the parties agree in concept to either support and/or to not actively oppose legislation making these changes. Should the legislation as introduced contain language raising concerns for one or more parties, each party below will make a good faith effort to engage in the legislative process to seek mutually agreeable language neutralizing or addressing identified concerns.

SIGNATURES:

- Rep. Joseph Graves, Chair, House Oversight Committee



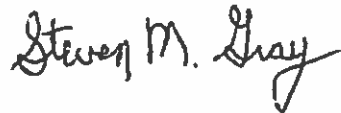
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- Rep. Kevin Hertel, Minority Vice Chair, House Oversight Committee



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- Steve Gray, Clinical Assistant Professor and Director, UM Unemployment Insurance (UI) Clinic, participating as an advisor to the MI Poverty Law Program (MPLP)



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- Stephanie Glidden, Legislative Director, MI AFL-CIO



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- Jean Doss, Capitol Services, Inc., Governmental Affairs Consultant to MPLP



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- Wendy Block, MI Chamber of Commerce



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- Delaney McKinley, MI Manufacturers Association



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- Neil MacVicar, MI Health and Hospital Association.



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**Work Group Proposed Language**  
**(Note: Not Every Issue Area Has Proposed Language)**

**Issue #1: Interest Applied to Overpayments**

**SUGGESTED AMENDMENT:**

**Amend Sec. 15:**

Sec. 15. (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the unemployment agency, and unpaid restitution of benefit overpayments shall bear interest at the rate of 1% per month, computed on a day-to-day basis for each day the delinquency is unpaid, from and after that date until payment plus accrued interest is received by the unemployment agency.

WITH REGARD TO UNPAID RESTITUTION OF BENEFIT OVERCHARGES, INTEREST WILL BE ASSESSED AS FOLLOWS:

- (1) INTEREST WILL NOT BE ASSESSED WHERE IMPROPER PAYMENTS RESULTED FROM AN ADMINISTRATIVE OR CLERICAL ERROR BY THE UNEMPLOYMENT AGENCY.
- (2) IN CASES WHERE THE UNEMPLOYMENT AGENCY DETERMINES THAT AN INDIVIDUAL MADE AN INTENTIONAL FALSE STATEMENT, MISREPRESENTATION, OR CONCEALMENT OF MATERIAL INFORMATION, INTEREST WILL BE ASSESSED AND ACCRUE BEGINNING ON THE DATE THAT THE DETERMINATION, REDETERMINATION, OR ORDER IS FINAL.
- (3) IN ALL OTHER CASES, INTEREST WILL BE ASSESSED AND ACCRUE ON ANY UNPAID DELINQUENCY BEGINNING ONE YEAR AFTER THE DETERMINATION, REDETERMINATION, OR ORDER IS FINAL.

The interest on unpaid contributions and on unpaid benefit overpayments, exclusive of penalties, shall not exceed 50% of the amount of contributions due at due date or 50% of the amount of restitution owing. Nothing in this act authorizes the assessment or collection of interest on a penalty imposed under this act. Interest and penalties collected pursuant to this section shall be paid into the contingent fund. WITH REGARD TO CONTRIBUTION PAYMENTS, the unemployment agency may cancel any interest and any penalty when it is shown that the failure to pay on or before the last day on which the tax could have been paid without interest and penalty was not the result of negligence, intentional disregard of the rules of the unemployment agency, or fraud.

## **Issue #2: Clarifying the Scope of the Advocacy Program**

### **Summary:**

Currently, under Agency informal policy, the accusation of fraud disqualifies the accused from access to the Act's free advocate system. The current approach assumes the accused is guilty until proven innocent, which is contrary to notions American jurisprudence. With the stakes so high it is imperative the accused be afforded minimal representation from the Advocacy Program which is funded by the Penalty and Interest Fund.

### **SUGGESTED AMENDMENT:**

#### **Amend Sec. 5a (5):**

(5) The ~~commission~~ AGENCY may include in the program standards regarding the provision of advocacy assistance services in precedent setting cases, multiclaimant cases, cases without merit, or regarding other cases or factors as determined by the ~~commission~~ AGENCY. TO THE EXTENT THAT FUNDING IS AVAILABLE IN THE APPROPRIATION PROVIDED FOR IN SECTION 5A(2), THE AGENCY SHALL NOT EXCLUDE FROM REPRESENTATION UNDER THIS SECTION CLAIMANTS OR EMPLOYERS ACCUSED OF FRAUD UNDER SECTION 54 OF THIS ACT. THE AGENCY SHALL RECOVER REPRESENTATION FEES FROM CLAIMANTS OR EMPLOYERS WHO ARE FOUND TO HAVE COMMITTED FRAUD FOLLOWING A FINAL ADJUDICATION.

## **Issues #3 & 4: Reopening & Ensuring Affected Parties Receive Notice**

### **Summary:**

Absent the certified mail language included in the original version of HB 4982, there remains a need to ensure that the UIA is making reasonable efforts to determine a claimant's updated address before issuing determinations. This concern is particularly acute where the Agency sends out an initial determination and either receives no response or receives the notice back marked "Return to Sender." To address this problem, the Agency should be required in either circumstance to contact Michigan's State and Treasury Departments to uncover all addresses associated with the claimant and then send a copy of the relevant determination or redetermination by certified mail to each of the claimant's known addresses. Moreover, good cause to reopen beyond 30 days should be expanded to include situations where a claimant can provide evidence that a notice was sent to the wrong address.

### **SUGGESTED AMENDMENTS:**

#### **Amend 32a (2):**

The unemployment agency ~~may~~ SHALL, ~~for~~ WHEN good cause IS SHOWN, including, BUT NOT LIMITED TO, DISCOVERY OF any administrative clerical error OR UPON THE PRODUCTION OF EVIDENCE BY AN INTERESTED PARTY THAT A PRIOR DETERMINATION OR REDETERMINATION WAS NOT SENT TO THE PARTY'S CORRECT ADDRESS, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue or within 3 years in the case of determinations relating to fraud. NOTWITHSTANDING SECTION 62, THE UNEMPLOYMENT AGENCY SHALL HAVE ONE YEAR FROM THE ISSUANCE OF BENEFIT PAYMENTS PURSUANT TO SECTION 32(F) TO RECONSIDER ANY ISSUE OTHER THAN FRAUD RELATING TO THE ISSUED BENEFITS.



**Amend 32a by adding (5):**

(5) IF A DETERMINATION OR REDETERMINATION INCLUDES A FINDING OF FRAUD, THE UNEMPLOYMENT AGENCY SHALL, IN ADDITION TO SENDING THE DETERMINATION OR REDETERMINATION TO THE ADDRESS ON FILE FOR THE PARTY WITH THE UNEMPLOYMENT AGENCY, ASCERTAIN FROM THE MICHIGAN DEPARTMENT OF STATE AND MICHIGAN DEPARTMENT OF TREASURY OTHER KNOWN ADDRESSES FOR THE PARTY AND SEND A COPY OF THE DETERMINATION OR REDETERMINATION TO EACH SUCH ADDRESS.

**Amend 32a by adding (6):**

(6) AN INTERESTED PARTY SHALL PROVIDE NOTICE OF A MAILING ADDRESS CHANGE FOR RECEIVING NOTICES ISSUED BY THE AGENCY DURING THE ACTIVE BENEFIT YEAR.

## Issue #5: Employer Non-Compliance Determination Process

### SUGGESTED AMENDMENT:

#### Amend Sec. 20 (a):

Sec. 20.

(a) Benefits paid shall be charged against the employer's account as of the quarter in which the payments are made. If the unemployment agency determines that any benefits charged against an employer's account were improperly paid, an amount equal to the charge based on those benefits shall be credited to the employer's account and a corresponding charge shall be made to the nonchargeable benefits account as of the date of the charge. ~~If an employer or employer's agent has a pattern of failing to respond with timely or adequate information required or requested under section 32, benefits paid to a claimant as a result of the employer's or employer's agent's failure to provide timely or adequate information shall be charged to that employer's account. To demonstrate a pattern sufficient to render the benefits chargeable, the unemployment agency shall document repeated failure to provide timely or adequate responses and shall take into consideration the number of instances of failure in relation to the number of requests. The number of failures must be more than 4 and constitute 2% or more of all the requests directed to the employer during the prior calendar year. A determination that an employer's account shall be charged and that the employer's account shall not be credited for the benefit payments is appealable in the same manner as other unemployment determinations. Recovery of benefits improperly paid to the claimant under this subsection shall be as provided in section 62(a).~~

1) AN EMPLOYER'S ACCOUNT SHALL NOT BE CREDITED FOR BENEFITS RELATING TO IMPROPERLY PAID BENEFITS WITH RESPECT TO A CLAIM FOR BENEFITS IF THE UNEMPLOYMENT AGENCY DETERMINES THAT:

(A) THE PAYMENT WAS MADE BECAUSE THE EMPLOYER, OR AN AGENT ON BEHALF OF THE EMPLOYER, WAS AT FAULT FOR FAILING TO RESPOND TIMELY OR ADEQUATELY TO THE AGENCY'S REQUEST FOR INFORMATION RELATING TO THE CLAIM FOR COMPENSATION SET FORTH IN A SPECIFIC REQUEST FOR INFORMATION RELATIVE TO A DISQUALIFICATION OR PERIOD OF INELIGIBILITY, AND THERE IS AN ESTABLISHED PATTERN OF FAILING TO RESPOND WITH TIMELY OR ADEQUATE INFORMATION.

(B) TO DEMONSTRATE A PATTERN SUFFICIENT TO RENDER THE BENEFITS CHARGEABLE, THE UNEMPLOYMENT AGENCY SHALL DOCUMENT EACH FAILURE BY THE EMPLOYER OR ITS AGENT TO PROVIDE TIMELY OR ADEQUATE RESPONSES, AND SHALL TAKE INTO CONSIDERATION THE NUMBER OF INSTANCES OF FAILURE IN RELATION TO THE NUMBER OF REQUESTS. FOR A PATTERN TO BE ESTABLISHED, THE NUMBER OF FAILURES MUST BE

MORE THAN 4 AND CONSTITUTE 2% OR MORE OF ALL THE REQUESTS DIRECTED TO THE EMPLOYER DURING A CALENDAR YEAR.

- (C) A RESPONSE TO A REQUEST FOR INFORMATION FROM THE AGENCY RELATING TO A CLAIM SHALL BE RECEIVED BY THE AGENCY NO LATER THAN 10 CALENDAR DAYS AFTER THE DATE OF MAILING. IF THE DEADLINE FALLS ON A SATURDAY, SUNDAY OR STATE RECOGNIZED HOLIDAY, THE RESPONSE SHALL BE MADE NO LATER THAN THE NEXT DAY THAT IS NOT A SATURDAY, SUNDAY OR STATE RECOGNIZED HOLIDAY. A RESPONSE RECEIVED BY THE AGENCY WITHIN THIS DESIGNATED TIME PERIOD WILL BE DEEMED TIMELY.
- (D) FOR A RESPONSE TO BE DEEMED ADEQUATE, THE EMPLOYER SHALL PROVIDE ANSWERS TO EACH OF THE QUESTIONS POSED BY THE AGENCY, OR PROVIDE A SUMMARY STATEMENT OF PERTINENT FACTS AND INFORMATION THAT ALLOWS THE AGENCY TO MAKE AN INFORMED DECISION REGARDING THE PAYMENT OR DENIAL OF UNEMPLOYMENT BENEFITS. IN THE EVENT THE EMPLOYER DOES NOT ANSWER A QUESTION OR DOES NOT PROVIDE A SUMMARY STATEMENT, IT SHALL PROVIDE AN EXPLANATION AS TO WHY THE QUESTION IS NOT BEING ANSWERED OR A SUMMARY IS NOT PROVIDED, OTHERWISE THE RESPONSE WILL BE DEEMED INADEQUATE.
- (E) THE AGENCY SHALL ISSUE A DETERMINATION EACH TIME AN EMPLOYER'S, OR ITS AGENT'S, RESPONSE IS DEEMED NOT TIMELY OR INADEQUATE. THE AGENCY'S DETERMINATION SHALL IDENTIFY THE TYPE OF NONCOMPLIANCE THAT OCCURRED AND INCLUDE AN EXPLANATION FOR THE FINDING. A DETERMINATION INDICATING NON-COMPLIANCE SHALL ALSO INCLUDE NOTICE THAT MORE THAN 4 INSTANCES OF NON-COMPLIANCE IN THE CURRENT CALENDAR YEAR WILL RESULT IN THE POTENTIAL LOSS OF CREDIT FOR IMPROPER CHARGES ON CLAIMS WITH NON-COMPLIANT RESPONSES OCCURRING IN THE SUBSEQUENT CALENDAR YEAR. SUCH A DETERMINATION MAY NOT BE APPEALED UNTIL AND UNLESS A NONCOMPLIANT DETERMINATION IS ISSUED AT THE END OF THE CURRENT CALENDAR YEAR PURSUANT TO SUBSECTION (G).
- (F) AN INCIDENT OF NON-COMPLIANCE WILL BE WAIVED WHEN AN EMPLOYER OR ITS AGENT PROVIDES A GOOD CAUSE EXPLANATION FOR NON-COMPLIANCE, OR RAISES A VALID LEGAL OR EVIDENTIARY OBJECTION TO THE AGENCY'S REQUEST FOR INFORMATION.

(I) "GOOD CAUSE" IS DEFINED AS:

- (A) THE INFORMATION REQUESTED WAS NOT AVAILABLE OR COULD NOT BE REASONABLY OBTAINED BY THE EMPLOYER WITHIN THE RESPONSE TIME ALLOTTED,
- (B) DISCLOSURE OF THE REQUESTED INFORMATION WOULD JEOPARDIZE THE HEALTH, SAFETY, OR MORALS OF THE EMPLOYER, ITS EMPLOYEES OR OTHERS DIRECTLY CONNECTED TO THE EMPLOYER,

(G) AFTER THE COMPLETION OF A CALENDAR YEAR, THE AGENCY SHALL ISSUE A DETERMINATION TO AN EMPLOYER THAT ESTABLISHED THE PATTERN SET FORTH IN SUBSECTION (B). THAT DETERMINATION SHALL BE ISSUED ON OR BEFORE JANUARY 5<sup>TH</sup> OF THE CURRENT CALENDAR YEAR AND INDICATE THE FOLLOWING INFORMATION REGARDING EACH NONCOMPLYING EVENT:

I. EACH CLAIMANT NAME

II. CLAIMANT SOCIAL SECURITY NUMBER

III. TYPE OF NONCOMPLYING EVENT FOR EACH CLAIM

IV. DATE OF AGENCY'S REQUEST FOR INFORMATION

V. THE AGENCY'S CASE NUMBER RELATING TO EACH NONCOMPLYING EVENT

VI. THAT AN EMPLOYER'S ACCOUNT SHALL NOT BE CREDITED FOR THE BENEFIT PAYMENTS ON CLAIMS FILED IN THE CURRENT CALENDAR YEAR WHEN ANY NONCOMPLIANT RESPONSES OCCUR ON THOSE CLAIMS.

VII. THAT THE DETERMINATION IS APPEALABLE IN THE SAME MANNER AS OTHER UNEMPLOYMENT DETERMINATIONS.

2) RECOVERY OF BENEFITS IMPROPERLY PAID TO THE CLAIMANT UNDER THIS SUBSECTION SHALL BE AS PROVIDED IN SECTION 62 (A).

## **Issue #6: Employer and Affected Individual Protection With Regard to Identity Theft Unemployment Claims**

With regard to fraudulent unemployment claims (identity theft/imposter type claims), the Michigan Employment Security Act does not specifically address the issue of identity theft, or imposter claims. As such, there is minimal statutory protection for employers or the affected individuals/employees, nor is there guidance for the Michigan Unemployment Insurance Agency on how to handle these claims. Both the employers and affected employees are left not knowing whether the fraudulent unemployment claim was actually deemed fraudulent, and held null and void. There is no final resolution provided to the employer or the affected employee. Further, the affected employee is never certain whether their social security number is going to be attached to improper benefit payments and subject to income tax liability.

Below is a proposal for a legislative amendment to accomplish protection for employers and affected individuals, and to provide guidance for the Michigan Unemployment Security Agency. This is simply an initial draft (ie: a "starting point"). I am seeking input, analysis and critique from others familiar with this issue. Please contact me with questions or comments.

**Proposed Act Title: "Protection for Employers and Affected Individuals With Regard to Identity Theft Unemployment Claims":**

- (1) Definitions for the purpose of this section:
  - (a) "Affected individual"<sup>1</sup> is the individual whose name and/or social security number an unemployment claim was filed under, but who affirms that they did not actually file an unemployment claim or reopen a claim which is attached to the beginning year benefit date associated with the identity theft claim.
  - (b) "Identity Theft Claim" is an unemployment claim that is identified by an employer or affected individual as being filed or reopened without authorization as a result of identity theft or by an imposter.
  - (c) "Identity theft" is an occurrence of an individual's personal information being used to file or reopen an unemployment claim without authorization.
  - (d) "Imposter" is a person or entity who files an unemployment claim or reopens a claim without authorization using the name, social security number and/or other personal information of an affected individual.
- (2) (a) The unemployment agency shall immediately cease all benefit payments to the putative claimant when the employer notifies the unemployment agency that a claim or reopening of a claim was done as the result of an act or of an incident of identity theft. The employer's notice will include:

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<sup>1</sup> Other terms that could be used include "compromised individual" or "identity theft victim"

- (i) a statement indicating the employer has good or legitimate reason to believe that the claim or reopening is an incident of identity theft;
  - (ii) the name and address, or last known address, of the affected individual, if known; if not known, then a statement to that effect;
  - (iii) a statement indicating that the information provided is true and accurate;
  - (iv) the signature of the person making the affirmation and the person's contact information; and,
  - (v) an affidavit from the affected individual indicating the following:
    - (1) a statement indicating the claim or reopening is the result of identity theft or the actions of an imposter;
    - (2) a statement indicating that the affected employee did not file a claim or reopening;
    - (3) the affected individual's name, address and other contact information;
    - (4) a statement indicating that the information provided on the affidavit is true and accurate;
    - (5) the signature of the person making the affirmation.
- (b) If the employer does not submit an affidavit from the affected employee with its notice, then the unemployment agency will consider the employer's allegation of identity theft, thoroughly investigate the matter and cease the payment of benefits as appropriate.
- (c) An affidavit can be filed by the affected employee directly with the unemployment agency.
- (d) An affidavit designed for an affected employee to report an identity theft claim shall be available on the unemployment agency's web site.
- (3) The unemployment agency shall send written or electronic notice to the employer and the affected individual if it discovers, before a monetary determination is issued, that a claim or reopening is fraudulent as the result of identity theft or an imposter. When the unemployment agency does not have an address for the affected individual, notice to the employer is sufficient.
- (4) Upon notice of an identity theft claim or reopening under Section (2), the unemployment agency shall promptly issue an acknowledgment to the employer, the affected individual and the address under which the claim was filed indicating:

- (a) The unemployment agency received notice that the unemployment claim filed or reopened was an act of identity theft;
  - (b) notice that the unemployment agency is investigating the matter;
  - (c) notice that it will issue a determination regarding the matter of identity theft; and,
  - (d) include any other notices, information or requests for additional information relevant to this matter.
- (5) (a) Upon notice of an identity theft claim pursuant to subsection (2), the unemployment agency shall promptly issue a determination indicating that:
  - (i) the recently filed claim is fraudulent as the result of identity theft or the actions of an imposter, the benefit beginning date is cancelled, and that the claim is deemed null and void;
  - (ii) the recent reopening of an existing claim is fraudulent as the result of identity theft or the actions of an imposter, and that the reopening of an existing claim is deemed null and void; or,
  - (iii) it cannot conclude whether the claim is fraudulent and shall explain its conclusion.
- (b) Appeal rights under Section 32a are afforded to the employer and affected employee concerning a determination issued under Section (2).
- (6) The unemployment agency shall not commence payment of benefits on a claim identified as an incident of identity theft under Section (2) until it verifies that the claim is not fraudulent and verifies the identity of the claimant.
- (7) When the unemployment agency makes a final adjudication that benefits were improperly paid as the result of identity theft or the acts of an imposter, the employer's account shall be credited within 60 days for the full amount of benefits charged.
- (8) The unemployment agency shall provide the Michigan Department of Treasury and the federal Internal Revenue Service with a report of all claims where benefits were paid during a calendar year on claims where notice was received pursuant to Section (2). The report shall be presented no later than January 31 of the next calendar year. If January 31 is a Saturday, Sunday, or legal holiday, the report shall be presented no later than the preceding business day.

(a) The report shall include the following:

- (1) Name of the person to whom the benefits were paid.
- (2) Name of the affected individual.
- (3) Social security number attached to the benefit payments.
- (4) The address of record for the payments.
- (5) The date each payment was made.
- (6) The amount of each payment made.
- (7) The form of each payment made.

(b) If the unemployment agency determines that the claim is fraudulent as the result of identity theft or an imposter, it will not issue notice of "certain government payments" (IRS Form 1099-G).

(9) A person, including a claimant for unemployment benefits, affected individual, an employing entity, or an owner, director, or officer of an employing entity, who willfully or intentionally misrepresents that an identity theft claim was filed shall be subject to sanctions and penalties under Section 54.



## **Issue #8: Penalties**

### **Summary:**

The current approach to claimant penalties is the Agency automatically charges the maximum penalty amount which is 400% of the benefit amount. We propose a 100% penalty for the first incident of fraud and 150% for all incidences after. This is still the highest initial penalty of any state and higher in total than all other states. We kept the 400% penalty for identity theft.

Note: Similar changes would need to be made to sections 54(a) & (c).

### **SUGGESTED AMENDMENTS:**

#### **Amend Sec. 54 (b):**

(b) Any employing unit or an owner, director, officer, or agent of an employing unit, a claimant, an employee of the unemployment agency, or any other person who makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or herself or any other person, to prevent or reduce the payment of benefits to an individual entitled thereto or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit under this act or under the unemployment compensation law of any state or of the federal government, as applicable, is subject to administrative fines and is punishable as provided in this subsection, notwithstanding any other penalties imposed under any other statute of this state or of the United States. For benefit years beginning on or after May 1, 2017, to establish fraud based on unreported earnings under this subsection, the unemployment agency must have in its possession the weekly wage information from the employer. A violation of this subsection is punishable as follows:

(I) IF THE OVERPAYMENT IS DETERMINED TO BE DUE TO FRAUD IN THE FIRST OCCURRENCE, NOT INVOLVING IDENTITY THEFT, 100% OF THE TOTAL AMOUNT OF THE OVERPAYMENT, IN ADDITION TO THE OVERPAYMENT AND ALL OTHER INTEREST CHARGES PROVIDED HEREIN, SHALL BE ASSESSED AND THE UNEMPLOYMENT AGENCY MAY RECOVER THAT AMOUNT.

(II) IF THE OVERPAYMENT IS DETERMINED TO BE DUE TO FRAUD, IN A SUBSEQUENT INSTANCE OCCURRING AFTER A NOTICE OF DETERMINATION OF FRAUD HAS BEEN SENT TO THE INTERESTED PARTIES, NOT INVOLVING IDENTITY THEFT, 150% OF THE TOTAL AMOUNT OF THE OVERPAYMENT, IN ADDITION TO THE OVERPAYMENT AND ALL OTHER INTEREST CHARGES PROVIDED HEREIN, SHALL BE ASSESSED AND THE UNEMPLOYMENT AGENCY MAY RECOVER THAT AMOUNT.

(III) IF THE OVERPAYMENT IS DETERMINED TO BE DUE TO FRAUD INVOLVING IDENTITY THEFT, 400% OF THE TOTAL AMOUNT OF THE OVERPAYMENT, IN ADDITION TO THE OVERPAYMENT AND ALL OTHER INTEREST CHARGES PROVIDED HEREIN, SHALL BE ASSESSED AND THE UNEMPLOYMENT AGENCY MAY RECOVER THAT AMOUNT.

~~(i) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is less than \$500.00, the unemployment agency may recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 2 times that amount. For a second or subsequent violation described in this subdivision, the unemployment agency may recover damages equal to 4 times the amount obtained.~~

~~(ii) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$500.00 or more, the unemployment agency shall attempt to recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 4 times that amount...~~

## **Issue #10: Clarifying the Factors for Hardship Waiver Eligibility**

### **Summary:**

Currently the hardship waiver application form used by the Agency asks for varying information about claimants' vehicles, Social Security Disability and the expectation to return to work at any time. It's unclear how these factors are considered outside of the current statutory language which specifies only disposable household income as a factor for consideration. The proposed language clarifies the meaning of disposable income and cash assets, borrowing language from the IRS Internal Revenue Manual and the Michigan Department of Health and Human Services' Bridges Eligibility Manual and Bridges Administrative Manual. The Agency currently uses a six-month period "look back" policy of reviewing the claimant's financial position. This language clarifies that the Agency should continue using that method. It also limits the number of times claimants can have a waiver considered to once every six months and fixes a potential internal inconsistency created by a 2013 amendment to this section.

### **SUGGESTED AMENDMENT:**

#### **Amend Sec. 62(a):**

(a) If the unemployment agency determines that a person has obtained benefits to which that person is not entitled, or a subsequent determination by the agency or a decision of an appellate authority reverses a prior qualification for benefits, the agency may recover a sum equal to the amount received plus interest, AS PROVIDED FOR IN SECTION 15(A), by 1 or more of the following methods: deduction from benefits or wages payable to the individual, payment by the individual in cash, or deduction from a tax refund payable to the individual as provided under section 30a of 1941 PA 122, MCL 205.30a. Deduction from benefits or wages payable to the individual is limited to not more than 50% of each payment due the claimant. The unemployment agency shall issue a determination requiring restitution within 3 years after the date of finality of a determination, redetermination, or decision reversing a previous finding of benefit entitlement. The unemployment agency shall not initiate administrative or court action to recover improperly paid benefits from an individual more than 3 years after the date that the last determination, redetermination, or decision establishing restitution is final. The unemployment agency shall issue a determination on an issue within 3 years from the date the claimant first received benefits in the benefit year in which the issue arose, or in the case of an issue of intentional false statement, misrepresentation, or concealment of material information in violation of section 54(a) or (b) or sections 54a to 54c, within 6 years after the receipt of the improperly paid benefits unless the unemployment agency filed a civil action in a

court within the 3-year or 6-year period; the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits; or the unemployment agency issued a determination requiring restitution within the 3-year or 6-year period. Except in a case of an intentional false statement, misrepresentation, or concealment of material information, the unemployment agency shall waive recovery of an improperly paid benefit ~~if the payment was not the fault of the individual and~~ if repayment would be contrary to equity and good conscience and shall waive any interest. If the agency or an appellate authority waives collection of restitution and interest, except as provided in subdivision (ii), the waiver is prospective and does not apply to restitution and interest payments already made by the individual. As used in this subsection, "contrary to equity and good conscience" means any of the following:

(i) The claimant provided incorrect wage information without the intent to misrepresent, and the employer provided either no wage information upon request or provided inaccurate wage information that resulted in the overpayment.

(ii) The claimant's disposable household income AND CASH ASSETS, exclusive of social welfare benefits, is at or below the annual update of the poverty guidelines most recently published in the Federal Register by the United States Department of Health and Human Services under the authority of 42 USC 9902(2), and the claimant has applied for a waiver under this subsection. IN CONSIDERING A WAIVER, ONLY CONSIDER THE FACTORS LISTED HERE. DISPOSABLE HOUSEHOLD INCOME IS THE DIFFERENCE BETWEEN INCOME AND ALLOWABLE LIVING EXPENSE. INCOME CONSISTS OF NET WAGES, INTERESTS AND DIVIDENDS, NET INCOME FROM BUSINESS, NET RENTAL INCOME, PENSION PAYMENTS AND ALIMONY. ALLOWABLE LIVING EXPENSES ARE EXPENSES THAT ARE NECESSARY TO PROVIDE FOR A CLAIMANT'S AND HIS OR HER FAMILY'S HEALTH AND WELFARE AND/OR PRODUCTION OF INCOME. THESE LIVING EXPENSES MUST BE REASONABLE IN AMOUNT FOR THE SIZE OF THE FAMILY, AS WELL AS ANY UNIQUE INDIVIDUAL CIRCUMSTANCES. CASH ASSETS INCLUDE: CASH ON HAND, BANK AND CREDIT UNION ACCOUNTS. ASSETS SUCH AS VEHICLES AND PERSONAL BELONGINGS ARE NOT COUNTED. THE UNEMPLOYMENT AGENCY SHALL REVIEW THE CLAIMANT'S STATUS FOR THE PREVIOUS SIX MONTHS PRIOR TO THE WAIVER APPLICATION TO DETERMINE ELIGIBILITY FOR WAIVER. ONLY ONE WAIVER WILL BE CONSIDERED PER SIX MONTH PERIOD. A waiver granted under the conditions described in this subdivision applies from the date the application is filed AND ANY RESTITUTION PAID BY THE CLAIMANT OR COLLECTED BY THE AGENCY AFTER THE DATE OF AN APPROVED WAIVER APPLICATION SHALL BE PROMPTLY REFUNDED TO THE CLAIMANT.

(iii) The improper payments resulted from an administrative or clerical error by the unemployment agency. A requirement to repay benefits as the result of a change in judgment at any level of administrative adjudication or court decision concerning the facts or application of law to a claim adjudication is not an administrative or clerical error for purposes of this subdivision.

